(11)

No. 91-1326

In The

Supreme Court of the United States

OCTOBER TERM, 1991

THE DISTRICT OF COLUMBIA AND SHARON PRATT KELLY, MAYOR,

Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[redacted] BRIEF OF THE CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

Daniel L. FitzMaurice
Counsel of Record
Thomas Z. Reicher
Glenn W. Dowd
Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499
(203) 275-0100

Attorneys for the Connecticut Business and Industry Association

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MOTION FOR LEAVE TO FILE BRIEF OF THE CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

Daniel L. FitzMaurice
Counsel of Record
Thomas Z. Reicher
Glenn W. Dowd
Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499
(203) 275-0100

Attorneys for the Connecticut Business and Industry Association

The Connecticut Business and Industry Association ("CBIA") respectfully moves for leave to file the accompanying brief as amicus curiae in this case. Letters of consent from the Petitioners, the District of Columbia and Sharon Pratt Kelly, and the Respondent, the Greater Washington Board of Trade, have been filed with this motion.

INTEREST OF AMICUS

The Connecticut Business and Industry Association is the largest business and trade association in the State of Connecticut, having approximately 7,000 members who employ a total work force of over 700,000 employees. CBIA presents the views of its members on public policy and legal issues to legislative and judicial authorities.

CBIA's principal interest lies in having this Court affirm the ruling of the court below that the District of Columbia statute is preempted by ERISA.[1] The District of Columbia statute was modeled on a Connecticut statute that imposes significant financial and administrative burdens on nearly all of CBIA's members. Furthermore, many of CBIA's members sponsor multi-state benefit plans which, despite ERISA's express goal of national uniformity, are now subject to disparate local regulations.

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[1] The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), codified at 29 U.S.C. §§ 1001-1461 (1988).

For all the foregoing reasons, the Connecticut Business and Industry Association respectfully moves for leave to file the accompanying brief as amicus curiae.

Respectfully submitted,

Daniel L. FitzMaurice
Counsel of Record
Thomas Z. Reicher
Glenn W. Dowd

Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499
(203) 275-0100

Attorneys for the Connecticut
Business and Industry Association

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Thomas Z. Reicher
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Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499
(203) 275-0100

Attorneys for the Connecticut
Business and Industry Association

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INTEREST OF THE AMICUS CURIAE

The interest of the Connecticut Business and Industry Association in this case is set forth in the accompanying Motion for Leave To File Brief as Amicus Curiae.

REASONS FOR AFFIRMING THE DECISION OF THE D.C. CIRCUIT

Summary of Argument

The decision below should be affirmed to promote the important policy objectives underlying ERISA[1] preemption. The goal of ERISA's preemption provision "was to minimize the administrative and financial burden of complying with conflicting directives among States . . . ." *Ingersoll-Rand Co. v. McClendon*, __ U.S. __, 111 S. Ct. 478, 484 (1990) (citations omitted). The D.C. statute[2] at issue in this case, and the Connecticut statute[3] upon which it was modeled, explicitly refer to and specifically target ERISA-covered plans and their sponsors. These statutes require employers who provide benefits to their active employees through ERISA-covered plans to provide the same level of benefits to employees eligible to receive workers' compensation. The D.C. statute and its Connecticut counterpart undermine the Congressional

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[1] The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), codified at 29 U.S.C. §§ 1001-1461 (1988).

[2] Workers' Compensation Equity Amendment Act of 1990 (D.C. Act 8-261) ("Equity Amendment Act" or "D.C. statute") (the relevant portion of which is codified at D.C. Code § 36-307 (a-1) (1991 Supp.) (App. A1)).

[3] Conn. Gen. Stat. § 31-284b (1991) ("Connecticut statute") (App. A3).

intent of "ensur[ing] that plans and plan sponsors would be subject to a uniform body of benefit law . . . ." *Id.* (citations omitted).

The D.C. and Connecticut statutes exemplify how states, through statutory sleight of hand, seek to regulate ERISA-protected plans in ways that Congress sought to foreclose through ERISA's broad preemption provisions. Indeed, this Court's failure to affirm the decision below would create a new and gaping hole in ERISA preemption. As illustrated by the decision of the Second Circuit with respect to the Connecticut statute,[4] a state statute previously held by this Court to be preempted by ERISA could be resurrected and made "preemption-proof" by recodifying it in the state's workers' compensation, disability or unemployment compensation laws and providing a nominal option for compliance through a "separately administered" plan.

For employers subject to the burdensome and often inconsistent requirements of state laws like the D.C and Connecticut statutes, the administrative and financial costs are real. CBIA estimates that Connecticut employers who provide health insurance benefits to their active employees must pay an additional $20,315,000 each year to provide "equivalent" benefits to employees eligible for workers' compensation. Employers who change their ERISA plans face the administrative burdens of tracking subclasses of employees whose benefit levels were set based on the plan in effect when they first became eligible to receive workers' compensation. The easiest way for employers to avoid these added costs is to eliminate employee benefits altogether, which cures the problem but kills the patient Yet for employers in the District of Columbia and Connecticut, eliminating or reducing benefits to active

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[4] *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S. Ct. 1415 (1991).

employees may well be the only viable alternative — unless this Court affirms the decision below.

Argument

1. The D.C. Statute Does Not Affect ERISA-Protected Plans In So Tenuous, Remote, Or Peripheral A Manner As To Avoid ERISA Preemption.

ERISA explicitly "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." ERISA § 514(a), 29 U.S.C. § 1144(a). "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has connection with or reference to such a plan." *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96-97 (1983). The "express preemption provisions of ERISA are deliberately expansive. . ." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987), and "Congress used the words 'relate to' in § 514(a) [the preemption provision] in their broad sense." *FMC Corp. v. Holliday*, ___ U.S. ___, 111 S. Ct. 403, 408 (1990) (citation omitted). Thus, ERISA preempts state laws that "relate to" employee benefit plans "even if the law is not specifically designed to affect such plans, or if the effect is only indirect." *Ingersoll-Rand*, 111 S. Ct. at 483 (citing *Pilot Life*, 481 U.S. at 47).

Notwithstanding the extraordinary breadth of ERISA preemption, this Court has recognized a narrow exception for laws of general applicability that "affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Shaw*, 463 U.S. at 100 n.21. *See also Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988) (Georgia's general garnishment statute not preempted by ERISA). The *Amici* inappropriately seize upon this exception to justify the D.C. statute, which specifically applies to ERISA plans. *Amici* also attempt to analogize the ongoing and intrusive burdens of the D.C. statute to an employer's one-time obligation to pay a

general tort award measured, in part, by an employee's lost benefits.[5] These arguments are strained and unpersuasive.

The D.C. statute requires only those employers who provide benefits through ERISA-covered plans to their active employees to provide "equivalent" benefits to employees who are eligible to receive workers' compensation.[6] Thus, the D.C. statute specifically refers to and explicitly targets ERISA-covered plans and their sponsors. Like the Texas cause of action held preempted in *Ingersoll-Rand*, "[w]e are not dealing here with a generally applicable statute that makes no reference to, or indeed functions irrespective of, the existence of an ERISA plan." *Ingersoll-Rand*, 111 S. Ct. at 483. "[T]here simply is *no* [obligation] if there is no plan." *Id.* at 484. Moreover, as held by the court below, the "*Shaw* 'exception' — that ERISA does not preempt state laws which affect benefit plans in a tenuous or peripheral manner— applies only to laws of general application; it does not protect state laws which specifically refer to ERISA benefit plans." *Greater Washington Bd. of Trade v. District of Columbia*, 948 F.2d 1317, 1322 n.13 (D.C. Cir. 1991), *cert. granted*, ___ U.S. ___, 112 S. Ct. 1584 (1992) (quoting *In re Dyke*, 943 F.2d 1435, 1448 (5th Cir. 1991)). The D.C. statute, which directly targets ERISA-covered plans, is not a law of general application and cannot avoid ERISA preemption under the exception articulated in *Shaw*.

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[5] *See* Brief of the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae in Support of Petitioners at 29; Brief of Amicus Curiae of the American Association of Retired Persons in Support of Petitioners at 11-12.

[6] There are, however, two categories of plans providing benefits to employees generally that fall within the D.C. statute but are exempt from ERISA coverage — namely, governmental and church plans. ERISA § 4(b)(1), (2), 29 U.S.C. §§ 1003(b)(1), (2) (App. A5).

Indeed, this Court has "virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are preempted under § 514(a)." *Ingersoll-Rand*, 111 S. Ct. at 483 (quoting *Mackey*, 486 U.S. at 829). Like the Pennsylvania anti-subrogation law found preempted in *FMC Corp.*, the D.C. statute makes reference to, and therefore is specifically designed to affect, benefit plans governed by ERISA.[7] Accordingly, in text and application, the D.C. statute "relates to" benefit plans protected from state regulation by ERISA.

Nor can the D.C. statute be saved by analogy to generalized tort damage awards. Unlike the D.C. statute, damage awards that refer to benefit levels in ERISA plans do not saddle such plans and their sponsors with substantial and continuous administrative obligations. These damage awards can be discharged by a single cash payment by the employer outside of an ERISA-covered plan. Thus, like the state-imposed severance obligations upheld in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), these awards can be satisfied without the establishment or maintenance of an on-going plan. In contrast, the obligations imposed by the D.C. statute directly target and affect the operation of ERISA plans. *See General Elec. Co. v. New York State Department of Labor*, 891 F.2d 25, 29 (2d Cir. 1989), *cert. denied*, 496 U.S. 912 (1990), *aff'd in part & rev'd in part*, 936 F.2d 1448 (1991) (New York prevailing wage law which imposed additional obligations on employers based on the degree to which their ERISA-covered plans failed to conform to local

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[7] The Pennsylvania anti-subrogation law held preempted in *FMC Corp.* applied to "[a]ny program, group contract or other arrangement for payment of benefits" and these terms "includ[e], but are not limited to, benefits payable by a hospital plan corporation or a professional health service corporation." *FMC Corp.*, 111 S. Ct. at 408 (citation omitted). The D.C. statute simply, but no less broadly, refers to "health insurance coverage." While neither statute makes an explicit reference to ERISA, both statutes obviously refer to benefits provided under plans covered by ERISA.

benefit standards is preempted, in part, because the benefit obligations imposed by the statute cannot be eliminated by a single cash payment). Moreover, the nominal option to create a separate plan to administer benefits under the D.C. statute does not sever the continuing link between the "separate" plan and the ERISA plan upon which it is premised. Thus, the link between ERISA-covered plans and the D.C. statute is far more substantial than the one-time obligation to pay a damage award.

As elaborated below, by imposing continuing economic and administrative burdens on ERISA-covered plans, the D.C. statute effectively regulates protected plans because the power to tax or burden ERISA plans truly is the power to regulate them. Accordingly, the D.C. statute clearly, specifically and directly "relates to" ERISA-covered plans and should be preempted by the express terms of ERISA § 514(a), 29 U.S.C. § 1144(a).

2. The Decision Below Promotes Congress' Goal Of National Uniformity Of Employee Benefit Plan Law And Prevents States From Regulating ERISA-Covered Plans Inconsistently.

Unless this Court affirms the decision below, state laws like the D.C. and Connecticut statutes will create particularly burdensome and inconsistent requirements for employers who sponsor ERISA-covered plans for employees in several states. Indeed, the Connecticut and D.C. statutes, while similar in concept, are different in several respects. Moreover, the disparate requirements imposed on multi-state plans and their sponsors may grow: other states may mandate benefits at levels that differ from the District of Columbia's and Connecticut's requirements (e.g., 80% of the coverage provided to active employees); they may set different mandatory time periods for providing these benefits (e.g., for up to one year of workers' compensation eligibility, as in the District of Columbia, or for the entire period of workers' compensation eligibility, as in Connecticut); or they may require employers to pay the same portion

of the cost of coverage as they did when the employee was active (as in Connecticut) or to pay the entire cost of the mandated coverage (as in the District of Columbia). Furthermore, states may target other ERISA plan benefits (e.g., pension benefits) as the basis for benefits mandated by statute. Thus, employers who sponsor multi-state benefit plans will not only be burdened by state-imposed obligations because of their ERISA-covered plans; they also may be burdened inconsistently by such obligations.

"Section 514(a) [of ERISA] was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ingersoll-Rand*, 111 S. Ct. at 484 (citing *FMC Corp.*, 111 S. Ct. at 409; *Fort Halifax*, 482 U.S. at 10-11 (1987); *Shaw*, 463 U.S. at 105, and n.25). By imposing an additional statutory requirement based upon the existence and terms of ERISA-covered plans, the D.C. and Connecticut statutes "subject plans and plan sponsors to burdens not unlike those Congress sought to foreclose through [ERISA] § 514(a)." *Ingersoll-Rand*, 111 S. Ct. at 484.[8]

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[8] The enactment of COBRA (codified at §§ 601-608 of ERISA, 29 U.S.C. §§ 1161-1168 (1988), and § 4980B of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 4980B (1988)) further supports ERISA's broad preemption of this area. COBRA requires employers maintaining certain group health plans to offer covered employees and their dependents the opportunity to extend coverage, at the employee's cost, upon the occurrence of certain events. Unlike the D.C. and Connecticut statutes, COBRA is a comprehensive and procedurally complete statute. For example, COBRA coverage terminates when the employer discontinues health benefits to active employees and when the COBRA beneficiary becomes covered under any other group health plan or entitled to Medicare benefits. ERISA, § 602(2), 29 U.S.C. § 1162(2) (1988). The enactment of COBRA illustrates the role of ERISA's preemption provision in reserving to Congress the exclusive authority to regulate employee benefit plans.

The saga of the Connecticut and D.C. statutes tells a cautionary tale about states' desires to regulate ERISA-covered plans. Initially, Connecticut ordered employers to allow compensation-eligible employees to continue to participate in the employers' ERISA plans. When federal courts held that ERISA preempted Connecticut's forced inclusion of compensation-eligible employees,[9] the state enacted the current version of the statute, Section 31-284b, which simply moved the same substantive requirement to another section of the Connecticut statutes and gave employers various options for compliance.[10] The District of Columbia, following the district court ruling in *Donnelley*, enacted the Equity Amendment Act modeled on the Connecticut statute. *Greater Washington Bd. of Trade*, 948 F.2d at 1324, n.22. This Court may write the final chapter of this tale by affirming the decision below. Absent such a concluding chapter, the states will have a road map for circumventing ERISA preemption in the areas

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[9] *Stone & Webster Eng'g Corp. v. Ilsley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom., Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983) held that Conn. Gen. Stat. § 31-51h (1981), the statutory predecessor to the Connecticut statute, was preempted by ERISA. The current Connecticut statute differs from its preempted predecessor in only one respect: the old law prohibited an employer from removing from its ERISA plan those employees who were eligible for workers' compensation, while the new statute gives the employer the option of keeping such employees in the plan or providing "equivalent" coverage through a separately administered plan.

[10] The Connecticut Attorney General aptly summarized the legislative history of the Connecticut statute as follows:

> Section 31-284b was enacted for the purpose of bringing the requirements of section 31-51h into the Workers Compensation Act *without substantive change*, in response to the District Court decision in *Stone & Webster*, [518 F. Supp. 1297 (D. Conn. 1981)].

1984 Conn. Op. Att'y Gen. 357, 361 No. 87-93 (emphasis added).

mentioned in ERISA § 4(b)(3): workers' compensation, disability benefits, and unemployment compensation. States would then be permitted to enact such laws that premised and measured employers' obligations to provide these kinds of benefits based upon the terms of each employer's ERISA-covered plan.

Indeed, this Court's failure to affirm the decision below would create a new and gaping hole in ERISA preemption through which states can resurrect previously preempted laws. For example, in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), this Court struck down a New Jersey workers' compensation statute. The New Jersey law provided that the injured employee's right to compensation payments "shall not be set off against [his or her] retirement pension benefits or payments." 451 U.S. at 508 (quoting N.J. Stat. Ann. § 34:15-29 (West Supp. 1980-1981) (as amended by 1977 N.J. Laws, Ch. 156)). Absent an affirmance of the decision below, however, New Jersey could achieve the same result: the state could mandate that, if a pension plan reduced the level of payments based on receipt of workers' compensation benefits, the employer must reimburse the employee for the lost pension income through a separately administered plan.[11]

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[11] This example and the Second Circuit's decision in *Donnelley* illustrate the apparent ease with which states can regulate ERISA plans by imposing obligations on plan sponsors. Connecticut has decided that employers ought to continue accident, health and life plan benefits on behalf of inactive employees who are eligible to receive workers' compensation, notwithstanding the employers' right under ERISA to limit plan participation to active employees. Because it cannot order an employer to change the terms of its ERISA plan, the State imposes a cost on employers whose plans it finds deficient. Under the Connecticut statute, the fee matches the "deficiency" in the ERISA-covered plan: the employer must provide "equivalent" coverage within or outside of the plan. Indeed, other states impose such costs using a slightly different method: including the value of employer-provided benefits in an employee's wages that form the basis for workers' compensation awards. *See, e.g.*, Kan. Stat. Ann. § 44-511(2), (3) ("wages" defined to include the value of employer-paid life, health and accident insurance and employer

(. . . *Continued*)

By affirming the decision below, this Court will prevent this blatant circumvention of ERISA preemption and promote Congress' goal of national uniformity in the regulation of ERISA-covered plans. In the absence of an affirmance by this Court, the obvious option for employers to avoid state laws like the D.C. and Connecticut statutes is simply to avoid establishing ERISA-covered plans altogether. *FMC Corp.*, 111 S. Ct. at 408; *Fort Halifax*, 482 U.S. at 11. Ultimately, this will harm the very employees that Congress intended to protect.

3. The Financial And Administrative Burdens Imposed By The D.C. And Connecticut Statutes Impel Employers To Eliminate Existing ERISA Plans Or Forego Establishing New Plans.

The D.C. statute and its Connecticut counterpart impose significant and direct financial burdens on employers who sponsor ERISA-covered employee benefit plans. CBIA estimates that in 1991 the cost to Connecticut employers of providing just the health insurance coverage mandated by the Connecticut statute was approximately $20,315,000.[12] While some employers might

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(. . . *Continued*)

contributions to pension and profit sharing plans); Alaska Stat. § 23.45.010 ("wages" defined to include employer contributions for medical care and other fringe benefits). In each case, the result is the same as under the D.C. and Connecticut statutes: only employers who sponsor ERISA-covered plans are subject to the statutorily imposed burdens.

[12] This cost estimate is computed as follows:

a. In 1991, the average per employee annual cost to Connecticut employers of providing health insurance was $4,232. Diane Levick, *Employer Health Costs Up*, Hartford Courant, January 28, 1992, at

(. . . *Continued*)

voluntarily bear part of this expense (particularly for short-term absences), Connecticut allows for no choice in the matter. Absent contrary guidance from this Court, the potential targets for state-generated burdens like the D.C. and Connecticut statutes will not be limited to health and life insurance plans and their sponsors. Indeed, states could require employers to make pension plan contributions on behalf of compensation-eligible employees that are "equivalent" to

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(. . . *Continued*)

B1 (reporting on the Health Care Benefits Survey prepared by A. Foster Higgins & Co.).

b. The Connecticut Department of Labor estimates that the average Connecticut employee works 1,620 hours per year which, assuming a 7.5 hour workday, translates into 216 workdays per year. Thus, the cost to Connecticut employers of providing health insurance to employees in 1991 was approximately $20 per work day ($4,232 / 216 days).

c. Connecticut workers who were eligible for workers' compensation benefits experienced 1,231,200 days of absence from work in 1990 (the latest year for which such figures are available). *See* Conn. Dept. of Labor, *Connecticut Occupational Injuries and Illnesses Report* (1990).

d. 82.5% of Connecticut workers are covered by employer-provided group health insurance. Lewin/ICF, *Blue Ribbon Comm'n on State Health Insurance Proposal to Expand Access to Health Care in Connecticut* (March 1, 1990). Thus, it can be inferred that 82.5% of the days of absence described in c. above were incurred with respect to such employees. Accordingly, approximately 1,015,740 days (1,231,200 days X 82.5%) of employer-provided coverage were mandated by the Connecticut statute in 1991.

e. Therefore, in 1991, the approximate cost to Connecticut employers of providing the health care benefits required by the Connecticut statute was $20,315,000. (1,015,740 days X $20).

those made while the employee was active. Similarly, states could require employers to provide pension, medical and other benefits as unemployment "compensation."

In addition to the direct costs of the additional benefits, the D.C. and Connecticut statutes impose several administrative burdens on sponsors of ERISA-protected plans. For example, both the D.C. and Connecticut statutes set the required benefits at the level provided when the employee first became eligible to receive workers' compensation. D.C. Code § 36-307(a-1)(3) (App. A1); *Gagnon v. Liberty Oil Equip.*, 7 Conn. Workers' Comp. Rev. Op. 81 (1989). Thus, each time an employer amends a benefit plan, it may create another subclass of employees with benefits that differ from those in the current plan. Over time in the volatile world of employee benefits, these subclasses may grow in number and range. Indeed, even after an employer terminates a plan or can no longer obtain coverage, it will remain liable to provide benefits defined by earlier plans to all of the subclasses of employees receiving workers' compensation. Furthermore, an employer must not only keep track of all of the subclasses of employees, it may have to self-insure the inactive employees because their benefit levels differ from the employer's current plan.

The administrative problems of tracking subclasses of employees are exacerbated in Connecticut, which sets no time limit on the employer's obligation to compensation-eligible employees. Unlike the D.C. statute, which caps the employer's obligation at fifty-two weeks, Connecticut ties the requirement to provide equivalent benefits solely to the employee's eligibility for workers' compensation. Conn. Gen. Stat. § 31-284b(a) (1991) (App. A3). Since an employee who suffers a "partial permanent disability" may be eligible for compensation indefinitely, an employer's obligation under the Connecticut statute can continue for many years. *See* Conn. Gen. Stat. §§ 31-308(a), 31-308a (1991).

With the cost of providing health insurance benefits to employees rising at an alarming rate, employers are compelled to

search for ways to reduce their health insurance expenditures. All too often the only viable alternative for employers is to reduce or even eliminate the health insurance benefits that they provide to employees. Since only employers who do not sponsor ERISA-covered plans are beyond the reach of the D.C. and Connecticut statutes, the statutes provide an additional incentive for employers to forgo creating or maintaining health plans. Moreover, since both statutes refer explicitly to the benefit levels in ERISA-covered plans, employers who might otherwise provide generous benefits to active employees are unwilling — or financially unable — to do so. Thus, these statutes burden not only ERISA plan sponsors but also their active employee participants and dependents.

Accordingly, this Court should affirm the decision below because of the substantial burdens imposed on ERISA plans by state-imposed regulations like the D.C. and Connecticut statutes.

CONCLUSION

For the reasons set forth above, CBIA respectfully requests that this Court affirm the decision of the D.C. Circuit.

Respectfully submitted,

Daniel L. FitzMaurice
Counsel of Record
Thomas Z. Reicher
Glenn W. Dowd

Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499

Attorneys for the Connecticut Business and Industry Association

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APPENDIX

CONTENTS OF APPENDIX

D.C. Code § 36-307(a-1)

§ 36-307. Medical services, supplies, and insurance.

* * * * * *

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide heath insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive worker's compensation benefits under this chapter.

(2) For purposes of this subsection, the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 36-315.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

(5) An employer shall be reimbursed for the provision of health insurance coverage required by this subsection from the special fund established in § 36-340. If an employer fails to provide health insurance coverage and an employee subsequently procures the insurance coverage and receives reimbursement for the procurement of insurance coverage from the employer pursuant to subsection (d) of this section, the employer shall be reimbursed from the special fund only for the amount that the employer would have paid for the coverage if the employer had provided the coverage.

Conn. Gen. Stat. Ann. § 31-284b
(West 1987 & Supp. 1992)

Sec. 31-284b. Employer to continue insurance coverage or welfare fund payments for employees eligible to receive workers' compensation. Use of second injury fund

(a) In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare plan shall provide to such employee equivalent insurance coverage or welfare plan payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury. As used in this section, "income" means all forms of remuneration to an individual from his employment, including wages, accident and health insurance coverage, life insurance coverage and employee welfare plan contributions and "employee welfare plan" means any plan established or maintained for employees or their families or dependents, or for both, for medical, surgical or hospital care benefits.

(b) An employer may provide such equivalent accident and health or life insurance coverage or welfare plan payments or contributions by: (1) Insuring his full liability under this section in any stock or mutual companies or associations that are or may be authorized to take such risks in this state; (2) creating an injured employee's plan as an extension of any existing plan for working employees; (3) self-insurance; or (4) by any combination of the methods provided in subdivisions (1) to (3), inclusive, of this subsection that he may choose.

(c) In the case of an employee welfare plan, an employer may provide such equivalent protection by making payments or contributions for such hours of contributions established by the trustees of the employee welfare plan as necessary to maintain continuation of such insurance coverage when the amount is less than the amount of regular hourly or weekly contributions for full-time employees.

(d) In the case where compensation payments to an individual for total incapacity under the provision of section 31-307, as amended by section 23 of public act 91-32 and section 26 of this act, continue for more than one hundred four weeks, the cost of accident and health insurance or life insurance coverage after the one hundred fourth week shall be paid out of the second injury fund in accordance with the provisions of section 31-349, as amended by section 35 of public act 91-32 and section 36 of this act.

(e) Accident and health insurance coverage may include but shall not be limited to coverage provided by insurance or directly by the employer for the following health care services: Medical, surgical, dental, nursing and hospital care and treatment, drugs, diagnosis or treatment of mental conditions or alcoholism, and pregnancy and child care.

ERISA § 4, 29 U.S.C. § 1003 (1988)

§1003. COVERAGE.

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained –

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both

(b) The provisions of this subchapter shall not apply to any employee benefit plan if –

(1) such plan is a governmental plan (as defined in sections 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under sections 410(d) of Title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.